

PHYLLIS H. ODELL

IBLA 83-602

Decided August 30, 1983

Appeal from a decision of the Colorado State Office, Bureau of Land Management, rejecting over-the-counter offer to lease for oil and gas. C-37182.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases:
Noncompetitive Leases

Where one or more applications for an oil and gas lease are received for a parcel pursuant to the simultaneous oil and gas leasing procedures and no lease issues as a result of such filings, 43 CFR 3112.7 requires that the lands be subject to leasing only in accordance with Subpart 3112.

2. Federal Land Policy and Management Act of 1976: Wilderness--Oil
and Gas Leases: Lands Subject to-- Wilderness Act

Instruction Memorandum (IM) 83-237 (Jan. 7, 1983) provides that BLM's policy is to issue no leases in BLM administered Wilderness Study Areas (WSA's). A subsequent clarification to this policy provides that BLM may continue to lease portions of WSA's that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable. IM 83-237, Change 2 (Mar. 7, 1983).

APPEARANCES: Phyllis H. Odell, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Phyllis H. Odell appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated April 1, 1983, rejecting her over-the-counter offer to lease certain lands in Dolores County, Colorado, for oil and gas. Appellant's offer, C-37182, was rejected because BLM held that the lands sought by appellant could only be leased in accordance with provisions of the simultaneous filing system, 43 CFR Subpart 3112. BLM also advised appellant that the lands at issue are contained in the Cahone Canyon wilderness study area (WSA). As such, BLM noted that under current policy, the lands will not be offered under Subpart 3112. The relevant oil and gas plats have been noted, BLM says, in accordance with this policy.

Appellant maintains that her offer should be accepted over the counter and refers to the past lease history of the lands in support thereof. A prior lease on these lands, C-12604, was issued on August 1, 1971, and terminated 1 year later by operation of law. The lands were then listed on the September 18, 1972, simultaneous list as parcel 245 and assigned case file number C-17052. B. J. Bradshaw received first priority for this parcel in the subsequent drawing, but no lease was issued because Bradshaw failed to return the required stipulations. The lands were again posted on the December 18, 1972, simultaneous list but were deleted prior to the acceptance of any offers. Appellant contends that there were, in effect, no qualified applicants for parcel 245 upon Bradshaw's "disqualif[ying] himself" and that parcel 245 automatically returned to "open filing status" where it has remained.

[1] Regulations in effect as of September 1972 provided that if a successful drawee, such as Bradshaw, was unqualified to receive a lease for a particular parcel, the lands in that parcel would be included in a simultaneous filing drawing to be held during the next month or a following month thereafter. 43 CFR 3112.5-1 (1971). Regulations presently in effect 1/ achieve a similar, though not identical, result. Regulation 43 CFR 3112.7 provides that lands shall be available for over-the-counter offers where, during the relevant filing period, no applications are received for the lands. Thus, under regulations existing at the time of the 1972 posting and at present, the lands at issue are not available for over-the-counter offers. 2/ James W. Phillips, 61 IBLA 294 (1982); L. A. Walstrom, Jr., 36 IBLA 397 (1978).

[2] Assuming, arguendo, that appellant's offer is the first-qualified offer for the lands at issue, the present BLM policy is that no leases shall be issued in BLM administered WSA's. Instruction Memorandum (IM) No. 83-237 (Jan. 7, 1983). A subsequent IM, No. 83-237, Change 3 (June 24, 1983), states that BLM may continue to lease portions of WSA's that are immediately adjacent to producing oil and gas fields or areas that are prospectively valuable.

Appellant maintains that BLM's current policy is to lease lands in WSA's for oil and gas and cites lease numbers and lease issuance dates in

1/ These regulations were published in the Federal Register on July 22, 1983, and are effective Aug. 22, 1983. 48 FR 33648, 33680.

2/ Regulations in effect between May 23, 1980, and Aug. 22, 1983, provided that where 10 or fewer applications for an oil and gas lease are received during a filing period for a particular parcel and no lease issues as a result of such filings, the lands in such parcel shall be subject to leasing by over-the-counter procedures. 43 CFR 3112.7. The record informally indicates that Bradshaw was one of only two applicants for parcel 245. At this time, only one drawing entry card was drawn for each parcel. Although this regulation appears to describe the present situation, we note that the regulation requires BLM to open such lands to over-the-counter leasing by a notice on the next list of lands posted by BLM under section 3112.1-2. No such notice has been issued by BLM.

support of this contention. Examination of this evidence reveals, however, no leases having been issued following December 30, 1982, when Secretary Watt directed that there be no mineral leasing or permitting in WSA's.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Will A. Irwin
Administrative Judge

